

**Letter of Findings: 65-20200162  
Indiana Overweight Proposed Assessment  
For the Year 2018**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Motor Carrier provided sufficient evidence that it should not be assessed the full civil penalty for being overweight.

**ISSUE**

**I. Motor Vehicles - Overweight Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-4-2; IC § 9-20-6-11; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the assessment of an overweight civil penalty.

**STATEMENT OF FACTS**

Taxpayer is a trucking company hauling milk from a dairy farm in Indiana to an out-of-state processing plant. On August 21, 2018, the Indiana State Police ("ISP") examined Taxpayer's commercial motor vehicle and issued an overweight violation. Later, ISP informed the Department of the violation. As a result, the Department issued Taxpayer a proposed assessment for being overweight in the form of a "No Permit Civil Penalty." Taxpayer protested the assessment of the civil penalty. The Department held an administrative hearing, and this Letter of Findings results. Further facts will be provided as necessary.

**I. Motor Vehicles - Overweight Penalty.**

**DISCUSSION**

ISP reported that Taxpayer needed but did not obtain an overweight permit. Taxpayer was 3,500 pounds over the statutorily allowed limit for gross weight.

As a threshold issue, it is a taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit." IC § 9-20-6-2.1 includes a special permit for bulk milk transportation.

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Taxpayers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty . . ." According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, the Department issued Taxpayer a "No Permit Civil Penalty." According to the ISP report, Taxpayer transported a load of milk at a weight that was more than the amount allowed under IC § 9-20-4-1. Taxpayer concedes that it failed to obtain a permit but maintains that it did not know the vehicle was overweight and the reasons for the extra weight were beyond its control.

Taxpayer did not apply for or hold any permits in 2018 but does not argue that it was unaware of the necessity for a permit on oversized loads. Instead, it argues that the driver did not believe it was carrying an oversized load and thus the No Permit Civil Penalty is excessive. The truck in question was loaded at a dairy farm that did not have a scale, but instead used a dipstick to determine the amount of milk loaded. The driver had no control over the loading process at the dairy farm. Finally, Taxpayer notes that the driver was new and incorrectly believed that he could drive on the highway and not need a permit because he was carrying agricultural goods.

The Department notes that, first, Taxpayer is required to have a permit for carrying loads that exceed statutory limits at the time of transport. This allows the Department to provide Taxpayer a route safe for transport. In this case, however, Taxpayer believed that their vehicle was below the statutory weight limit. Taxpayer did not have a permit on their vehicle at the time of the traffic stop, and therefore was correctly assessed a No Permit Civil Penalty. However, the Department understands Taxpayer's position that it relied on a third party to accurately load the vehicle in question with the correct amount of milk. Moreover, although incorrectly relied upon by the driver in this case, Taxpayer would not have required a permit for travel on roads other than an interstate highway, because the load was less than 10 percent over the statutory weight limit. IC § 9-20-4-2.

In addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized by its statutory discretion and this Letter of Finding.

### **FINDING**

Taxpayer's protest is sustained in part and denied in part.

September 29, 2020

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